

Status: H Local Govt
Companion Bill: SB 5669
Short Description: Strengthening energy codes.
Lead Division: State Building Code Council

Liaison has already completed their final review.

Your Review

Initial Questions

☐

Bill misassigned to division

☐

Bill doesn't impact Department of Enterprise Services

Review Questions

1. Reviewer Role

What is your role?

Lead division analyst (agency lead)

2. Bill Summary

2A. What does the bill direct or require DES to do? List and summarize the sections that impact DES.

**Section 1 (Intent):** Specifies that in order to meet the statewide greenhouse gas emissions limits in RCW 70A.45.020, the state must require construction of increasingly low-emission energy efficient homes and buildings and achieve construction of zero fossil-fuel greenhouse gas emission homes and buildings by 2030.

**Section 2(b):**  
Adds new requirements for new buildings constructed under the residential and nonresidential state energy codes that are adopted by the council by 2034: This is in addition to the existing requirements for at least 70 percent reduction in annual net energy consumption under the residential and nonresidential energy codes that become effective in 2031.

- Must be net-zero ready, including a reduction of at least 80 percent in annual net energy consumption using the adopted 2006 Washington state energy code as a baseline.
  - Must include wiring for photovoltaic panel installation.
  - This is in addition to the existing requirements for at least 70 percent reduction in annual net energy consumption under the residential and nonresidential energy codes that become effective in 2031.
- Requires the council to further define and include net-zero ready measures in the code adoption process.

**Section 3:** Requires cities and counties to enforce the Washington state energy code for residential buildings or adopt the statewide residential reach code established pursuant to RCW 19.27A.020(6). Specifies that any local residential energy code other than the Washington state energy code for residential buildings and the statewide residential reach code is preempted, and that the reach code may not exceed net-zero energy use.

**Section 4:**  
Repeals the allowance space heating equipment efficiency to offset or substitute for building envelope thermal performance.  
Deletes the requirements the Washington state energy code for residential structures to preempt the residential energy code of each city, town, and county in the state of Washington.  
Deletes the requirement for the council to evaluate and consider adoption of the international energy conservation code in Washington state in place of the existing state energy code.  
Requires the council to adopt by rule a statewide residential reach code for optional adoption and enforcement by any city, town, or county. Specifies that the statewide residential reach code must achieve the reductions in energy consumption and greenhouse gas emissions required in the 2031 energy code for residential buildings under RCW 19.27A.160.  
Specifies that the department of commerce shall develop a proposal covering the technical provisions of the reach code.  
Specifies that the council must adopt the statewide residential reach code as an appendix to the 2021 residential energy code to be effective by 2023.

2B. How is this different from what DES currently does?

The Washington codes are updated every three years; currently the Council is in the middle of adopting the 2021 codes. The residential energy code must be adopted by December 1, 2022, and the effective date is July 1, 2023. Section 4 of this bill requires the Council to adopt the statewide residential reach code as an appendix to the 2021 residential energy code, to be effective by 2023. This means the reach code must be adopted before the base energy code.

The adoption of reach code requires numerous Council and Technical Advisory Group (TAG) meetings, public hearing and work-sessions. Following the current schedule, the Council needs to approve the proposals and refer them for public hearing at the Council meeting in June, and the CR-102 must be filed by August 5, 2022. If the work needed for the reach code adoption is done while the regular code cycle is going, this will disrupt the process and may affect the adoption of the regular residential energy code. Therefore, the reach code most likely will require off-cycle rulemaking; the effective date also must be amended (July 1, 2024 instead of 2023). The off-cycle rulemaking follows the same procedure, but will require special Council and TAG meetings, public hearings and testimony. It will also affects the third year of the code adoption cycle, during which the Council staff prepares the documents needed for the new codes (insert pages, rationale for the new amendments, errata, editorial corrections, etc.). This will require reorganization and most likely new Council staff.

2C. If you know, please explain what issues or concerns prompted this legislation, and if there was similar legislation introduced in the past.

The current Energy Code Act sets the residential energy code as a minimum and maximum code, without giving the local government the ability to amend the code to make it more stringent, as they can with the nonresidential energy code. There are some jurisdictions (Seattle, Kirkland and Issaquah, for example) that would like the ability to go above the current state code requirements. Similar legislation was introduced in 2021 (HB 1084), 2019 (1257/5293) to allow local jurisdictions to amend the residential energy code. In 2019, the original bills for HB 1257/SB5293 included provisions for the council to develop “reach” energy code appendices for the residential energy code; later versions changed it to allow local jurisdictions to adopt amendments.

3. Policy/Operational Impacts

3A. Policy and/or operational impacts

Major

3B. Describe the operational impacts. These may include changes to existing programs, benefits, processes, or systems.

The Washington codes are updated every three years; currently the Council is in the middle of adopting the 2021 codes. The residential energy code must be adopted by December 1, 2022, and the effective date is July 1, 2023. Section 4 of this bill requires the Council to adopt the statewide residential reach code as an appendix to the 2021 residential energy code, to be effective by 2023. This aligns with the current rulemaking process. However, the energy code adoption requires numerous Council and Technical Advisory Group (TAG) meetings, public hearing and work-sessions. Following the current schedule, the Council needs to approve the proposals and refer them for public hearing at the Council meeting in June, and the CR-102 must be filed by August 5, 2022. If the work needed for the reach code adoption is done while the regular code cycle is going, this will disrupt the process and may affect the adoption of the regular residential energy code. Therefore, the reach code most

likely will require off-cycle rulemaking; the effective date also must be amended (July 1, 2024 instead of 2023). The off-cycle rulemaking follows the same procedure, but will require special Council and TAG meetings, public hearings and testimony. It will also affects the third year of the code adoption cycle, during which the Council staff prepares the documents needed for the new codes (insert pages, rationale for the new amendments, errata, editorial corrections, etc.). This will require reorganization and most likely new Council staff.

3C. Will a policy or policies need to be created or updated, because of this bill?

Yes

If Yes, please describe what policies will need to be created or updated:

See 3B.

3D. Does the bill require DES to submit a report to the Legislature or another body?

No

If Yes, please describe the report requirements:

3E. If enacted, would this bill require a new rule or revise an existing rule?

Yes

If yes, identify the section of the bill and cite the affected rules:

Section 2(b) adds new requirements for new buildings constructed under the residential and nonresidential state energy codes that are adopted by the council by 2034. This will require various changes in the Energy Code (WAC 51-11C and 51-11R).

Section 4(2) repeals the allowance space heating equipment efficiency to offset or substitute for building envelope thermal performance. This will require various changes in the residential and the commercial energy code (WAC 51-11C and 51-11R).

Section 4(6) requires the council to adopt by rule a statewide residential reach code for optional adoption and enforcement by any city, town, or county. This will require various changes in the residential energy code (WAC 51-11C and 51-11R).

4. Fiscal Impacts

4A. Estimate the annual fiscal impact.

More than \$50,000

4B. Describe the fiscal impact and (if possible) quantify the impact DES's operational/administrative resources, including the types and extent of resources needed.

Every three years the SBCC adopts 8 new building codes, including the Washington State Energy Code-Residential, and the Washington State Energy Code-Commercial. The adoption process includes review and evaluation of the model codes and the existing WA amendments, as well as review and evaluation of proposed WA amendments. The proposed amendments are submitted by stakeholders or driven by statutory mandates. The number of proposals continued to increase over the years; the complexity of the proposals and the necessary analysis continue to climb as well.

The statutory change in 2018 introduced more complexity into the rulemaking and filing process for the state building code council. SBCC was added as an agency required to follow the requirements for significant legislative rules outlined in RCW 34.05.328. The initial evaluation of this change significantly underestimated the impact and associated workload increase. With this change all suggested code modifications must now ensure:

- Proposals are tracked and made public through the process, to include reviews and modifications
- Proponents and stakeholders are notified as to when their issues will be discussed.
- A cost-benefit analysis and small business economic impact statement is completed.
- Public comments are logged, posted and responded to as part of the rulemaking process.

Current staffing levels are unable to meet the need to perform the work required by this bill and to meet the Council's existing responsibilities and obligations.

Section 2 (b) Net-zero ready buildings:

At least one additional FTE, Commerce Specialist 4 (aka Code Specialist 4) on a limited term until the rule is adopted by the Council.

- Commerce Specialist 4 - \$160,000/annually (Project appointment. Duration of appointment is dependent on final decisions about the implementation timeline; currently 2034)

Section 4(6) Adoption of reach code:

- The proposed implementation date (2023) is difficult to meet; most likely this bill will require off-cycle rulemaking. The SBCC adoption cycle is currently set for Council and Advisory meetings to adopt the 2021 codes (including the "regular" commercial and residential energy codes) by December 2022.The development of new reach code would require 10 Technical Advisory Group (TAG) meetings for 2-3 Council members; three MVE Standing Committee meetings with 5-7 Council members; three additional Council meetings with 20 Council members. The travel cost per Council member is \$700 (\$318 per diem + \$320 flight + \$50 car rental + \$12 parking) per meeting.
- Current staffing levels are unable to meet the need to perform the work required by this section. SBCC would need to hire a permanent Commerce Specialist 4 (aka Code Specialist 4) to help with the reach code and further support the SBCC with the development and adoption of an energy code that constructs increasingly energy efficient homes and buildings that help achieve the broader goal of building zero fossil fuel greenhouse gas emissions homes and buildings by 2031.
- Commerce Specialist 4 - \$160,000/annually (on-going funded is needed)

Provide Link to Fiscal Note:

5. Stakeholder Impacts (external to DES)

5A. Overall effect on stakeholders:

Uncertain

5B. Impacted Stakeholders

- State
- Local

5C. Describe the impacts on all stakeholders including agencies, boards, governments (local, state), unions or any other identified stakeholders.

The existing law (RCW 19.27A.015) specifies that the Washington state energy code for residential buildings shall be the maximum and minimum energy code for residential buildings in each city, town, and county. This allows builders to build the same house in any jurisdiction and be assured it met the building codes. This bill changes this. The Council is required to adopt the reach code as an appendix to the energy code, and the reach code will provide more stringent requirements than the base energy code. The reach code cannot be enforced statewide; it is an option for local adoption. Although this may lead to inconsistencies in construction throughout the state for residential projects, it is difficult to assume how many cities and counties will adopt the appendix and enforce it, and whether or not the appendix will have impact on stakeholders.

6. Amended Bill Impacts

How does the current amended version you've been assigned differ in impact compared to the last version you looked at?

7. Recommendations

7A. Do you recommend that we testify on this bill?

No

7B. If yes, on what issues?

Testify as needed on the following:

Clarify the implementation dates

Coordination with the Department of Commerce

7C. Proposed amendment(s):

**Section 1:** Replace the year of 2030 with 2031 to align with the dates in the existing law.

**Section 2(1):** For the purposes of providing more clarity and to align with the current triennial code adoption cycle, modify the effective dates in (a) and (b).

**Option 1:**

(a) A reduction of at least 70 percent in annual net energy consumption under the residential and nonresidential energy codes that become effective in ~~2031~~ **2032**, using the adopted 2006 Washington state energy code as a baseline.

(b) New buildings must be net-zero ready, including a reduction of at least 80 percent in annual net energy consumption using the adopted 2006 Washington state energy code as a baseline and must include wiring for photovoltaic panel installation under the residential and nonresidential state energy codes that ~~are adopted by the council by 2034~~ **become effective in 2035**. The state building code council shall further define and include net-zero ready measures in the code adoption process.

OR

**Option 2:**

(a) A reduction of at least 70 percent in annual net energy consumption under the residential and nonresidential energy codes that ~~become effective~~ **are adopted by the council** in 2031, using the adopted 2006 Washington state energy code as a baseline.

(b) New ~~buildings~~ **residential and nonresidential construction** must be net-zero ready, including a reduction of at least 80 percent in annual net energy consumption using the adopted 2006 Washington state energy code as a baseline and must include wiring for photovoltaic panel installation under the residential and nonresidential state energy codes that are adopted by the council ~~by~~ **in** 2034. The state building code council shall further define and include net-zero ready measures in the code adoption process.

**Section 2(1)(b): Modify Section 2(1)(b) to align with the language in Section 2(1)(a):**

(b) New buildings must be net-zero ready, including a reduction of at least 80 percent in annual net energy consumption using the adopted 2006 Washington state energy code as a baseline and must include wiring for photovoltaic panel installation under the residential and nonresidential state energy codes that are adopted by the council by 2034. The state building code council shall further 13 define and include net-zero ready measures in the code adoption process.

**Section 4(6):**

The state building code council must adopt by rule a statewide residential reach code for optional adoption and enforcement by any city, town, or county. The statewide residential reach code must achieve the reductions in energy consumption and greenhouse gas emissions required in the ~~2031~~ **2030** energy code for residential buildings under RCW 19.27A.160. The department of commerce shall develop a proposal covering the technical provisions of the reach code ~~and prepare the rulemaking documents as required by RCW 34.05.328~~. The state building code council must adopt the statewide residential reach code as an appendix to the 2021 residential energy code to be effective by ~~2023~~ **July 1, 2024**.

7D. Should the bill be reviewed by the AG?

No

Is there any additional background that would be helpful?

**Recommended Position**

Neutral

Explanation

The SBCC has directed staff to select neutral unless the SBCC directs staff to do otherwise.

**Recommended Priority**

High

Explanation

This bill impacts the SBCC.

**Is your review complete?**

Yes